

INDEX OF MEMORANDA
A-502 (A)

No.

- 1) Special Exception Application
- 2) Letter to Caroline Seiden from Jack Andrews, July 10, 2006
- 3) Statement of Justification
- 4) Antenna Specification Sheets
- 5) Existing Survey/Site plan/Architectural Drawings (Reduced version)
- 6) Resolution A-502
- 7) Draft Resolution A-502(A)

BOARD OF APPEALS
MODIFICATION OF
SPECIAL EXCEPTION APPLICATION

In accordance with Chapter 24, Article VII, Section 24-187-190 of the City Code

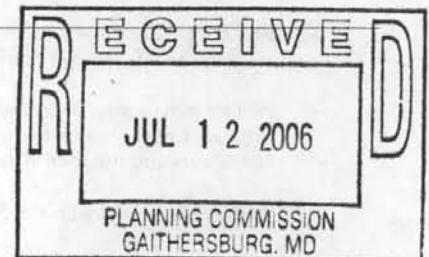
SUBJECT PROPERTY The Kindley Building
ADDRESS 333 Russell Avenue, Gaithersburg
ZONING CLASSIFICATION R-90
LOT N238 BLOCK _____ SUBDIVISION _____APPLICANT T-Mobile Northeast, LLC TELEPHONE 240-264-8726
ADDRESS 12050 Baltimore Ave., Bethesda MD 20705SPECIAL EXCEPTION TYPE Modification to Special Exception A-502

NATURE OF APPLICATION

Briefly describe application request **referencing appropriate section of City Code.**Replace all 6 approved panel antennas (72" x 8") with
6 new antennas (53" x 12.9") at the same previously
approved locationsList case numbers of all applications filed within the past three (3) years pertaining to any portion of subject property.

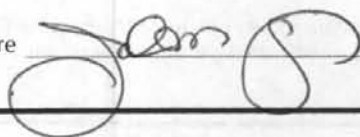
SUBMISSION REQUIREMENTS

1. A written statement explaining the request to the Board of Appeals.
2. Supporting documentation, see list on reverse side.
3. Fees, see separate schedule.



I have read and complied with the submission requirements and affirm that all statements contained herein are true and correct.

Signature _____



Date _____

7/10/06B04
#1
A-502(A)
8/10/06

SUBMISSION REQUIREMENTS

In accordance with Chapter 24, Article VII, Section 24-188(a)(l) of the City Code
An application for a special exception must go to the Planning Commission for a recommendation.

1. ☐ **A statement explaining in detail how the Special Exception is to be operated**, including hours of operation, number of anticipated employees, occupants and clientele, equipment involved and any special conditions or limitations which the petitioner proposes for the adoption by the Board of Appeals.
2. ☐ **Survey plats, siteplans or other accurate drawings** showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed from the nearest property lines.
3. ☐ **Plans, architectural drawings, photographs, elevations, specifications** of other detailed information depicting fully the exterior appearance of the existing and proposed construction, including parking and access, exterior lighting, and signs involved in the petition.
4. ☐ **Plans showing conformance with City Environmental Standards for Development Regulation, Chapter 22 of the City Code, and additional landscape and lighting plan.**
5. ☐ **Copy of official zoning vicinity map** with a one-thousand-foot radius (circle) surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties. (Zoning map is available from the Planning and Code Administration).
6. ☐ **List of names and addresses of adjoining and confronting property owners or occupants** within two hundred feet of the subject parcel. If such property is a condominium, cooperative, or owned by a homeowners' association the petitioner must provide their current address and that of their resident agent. (Information can be researched in Planning and Code Administration.)
7. ☐ **The lease, rental agreement or contract to purchase by which the petitioner's legal right to prosecute the petition is established**, if the petitioner is not the owner of the property involved, or the authorized agent of the owner.
8. ☐ **Applicable Master Plan maps** reflecting proposed land use, zoning and transportation, together with any other portions of the applicable Master Plan deemed pertinent by the petitioner. (Available from the Planning and Code Administration).
9. ☐ **All additional exhibits** which the petitioner intends to introduce and/or the identification of exhibits intended to be introduced at the public hearing.
10. ☐ **A summary of what the petitioner expects to prove**, including the names of petitioner's witnesses, summaries of the testimony of expert witness, and the estimated time required for presentation of the applicant's case.
11. ☐ **All expert reports shall be filed at least fifteen (15) days prior to the public hearing.**
12. ☐ **A list of names and addresses of persons whom you wish to notified of the public hearing**, other than adjacent property owners.
13. ☐ **Required fee.**

CRITERIA

In accordance with Chapter 24, Article VII, Section 24-189(b) of the City Code
The Board of Appeals may grant a Special Exception if the proposed use:

- Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in the article.
- Complies with standards and requirements specifically set forth for such use as may be contained in this chapter and the development standards for the zone within which the intended use will be located.
- Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity.
- Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses.
- Will be consistent with the Master Plan or other planning guides or capital programs for the physical development of the district.
- Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.
- Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements.
- When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.



July 10, 2006

Caroline Seiden, Planner
Staff Liaison to the Board of Appeals
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877-2098

RE: Application for Special Exception Modification
Board of Appeals Case Number A-502

Dear Ms. Seiden:

Enclosed please find an application for the Modification of Special Exception application; a Statement of Justification; and a set of drawings of the existing facility.

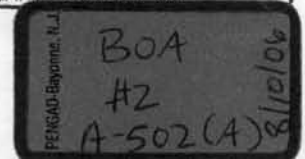
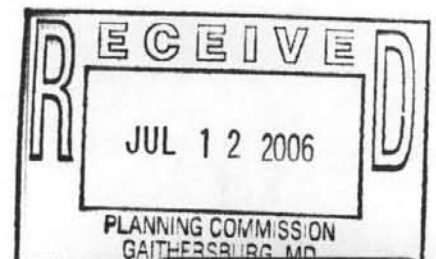
As we discussed, T-Mobile is merely proposing to replace the six existing 72" by 8" antennas with six new 53" by 12.9" antennas at the same locations approved in case number A-502. Nothing else will be altered.

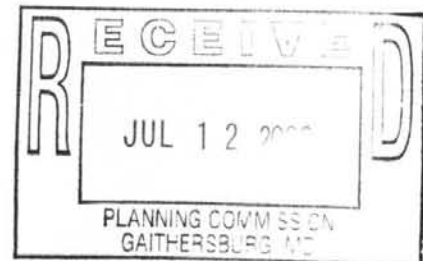
If you have any questions, concerns or comments, or if I can be of assistance, please do not hesitate to contact me at 240-264-8726, or email me at jack.andrews@t-mobile.com.

Very Truly Yours,

Jack Andrews
A&E Coordinator, Site Expansion
T-Mobile (Omnipoint)
12050 Baltimore Avenue
Beltville, MD 20705

12050 Baltimore Avenue
Beltville, MD 20705





July 10, 2006

RE: APPLICATION FOR SPECIAL EXCEPTION MODIFICATION
T-Mobile Northeast LLC (f/k/a Omnipoint Communications) facility at
333 Russell Avenue, Gaithersburg, MD 20877
Zone: R-90 (Medium Density Residential)
T-Mobile File Number: WAN403
Board of Appeals Case Number: A-502

STATEMENT OF JUSTIFICATION

T-Mobile Northeast LLC, formerly known as Omnipoint Communications Cap Operations, LLC, currently has an existing rooftop telecommunications facility located at 333 Russell Avenue, in Gaithersburg which received Special Exception Use approval in Case Number A-502, approved on May 9, 2002.

Case Number A-502

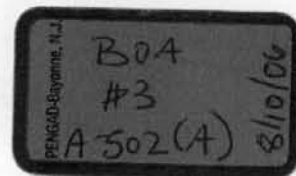
In case number A-502, the Board of Appeals' approved six (6) antennas with dimensions of seventy two inches (72") tall by eight inches (8") wide by two point seven five inches (2.75) deep mounted on the face of the rooftop penthouse screen wall. In reaching this decision, the Board concluded that the proposed facility met all of the applicable Special Exception criteria, that the proposed use was consistent with the master plan of Neighborhood One in which the subject property is located, and that the use is in harmony with the character of the neighborhood in which the site located. The Board specifically found that the top of the antennas would be attached to, and not protrude above, the top of the penthouse screen wall. The antennas would be painted with two tones of paint in order to blend into the existing color scheme of the building exterior and ensure compatibility with the exterior design. The Board also approved equipment cabinets to be installed behind the penthouse screen walls.

After the Special Exception was approved and building permit issued, T-Mobile constructed the site in accordance with all requirements and conditions.

The Instant Special Exception Modification proposal

In the instant application, T-Mobile seeks to replace each of the six (6) existing antennas with six (6) new APX16PV-16PVL antennas that are fifty three (53) inches tall

12050 Baltimore Avenue
Beltsville, MD 20705



by twelve point nine (12.9) inches wide by three point one five (3.15) inches deep, and accordingly seeks a modification of the approved Special Exception. The replacement antennas will be located at the same six (6) locations approved by the Board of Appeals for the original larger antennas. The replacement antennas shall likewise be painted in two tones of paint color in order to blend into the existing color scheme of the building exterior and ensure compatibility with the exterior design, and will not protrude above the penthouse screen wall.

The replacement antennas are not intended to appreciably alter T-Mobile's wireless propagation coverage in the area; accordingly, no radio-frequency propagation maps have been submitted with this instant application. Rather, the APX16PV-16PVL replacement antennas provide for electrical down-tilt, which allows T-Mobile technicians to remotely and electronically manipulate the tilt of each antenna rather than manually making each adjustment, thereby obviating the need for scheduling rooftop site visits by technicians. The proposed modification will not reduce the number of routine monthly maintenance visits by a single vehicle (which are necessary maintain the equipment cabinets), and will not impact local traffic or parking.

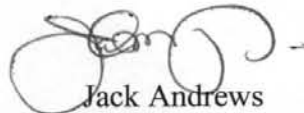
The replacement antennas will be installed after the existing antennas are removed. Installation is not expected to exceed more than one or two days.

No changes to the equipment cabinets are proposed. No lights, signs or any other alterations are proposed. No changes to the operating frequencies or radio-frequency emissions are proposed. The proposed modifications will not result in any objectionable vibrations, noise, fumes, odors, dust, toxicity, glare or physical activity. The proposed modifications will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

T-Mobile respectfully requests that the Board of Appeals approve this Special Exception Modification request.

If you have any questions, concerns or comments, or if I can be of assistance, please do not hesitate to contact me at 240-264-8726, or email me at jack.andrews@t-mobile.com.

Respectfully Submitted,



Jack Andrews
A&E Coordinator, Site Expansion
T-Mobile (Omnipoint)
12050 Baltimore Avenue
Beltsville, MD 20705

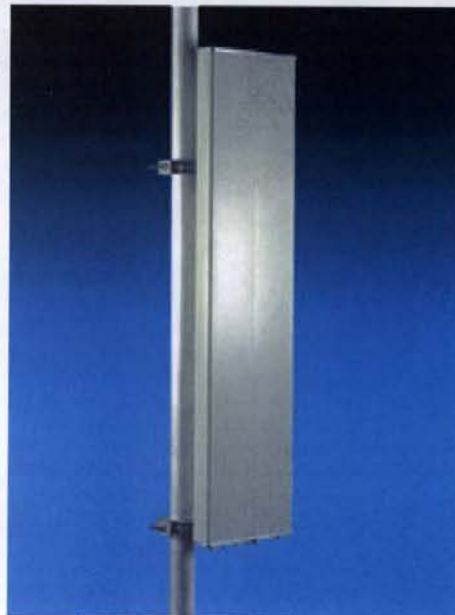
12050 Baltimore Avenue
Beltsville, MD 20705

Optimizer® Panel Dual Polarized Antenna



Product Description

Gathering two X-Polarised antennas in a single radome this pair of variable tilt antenna provides exceptional suppression of all upper sidelobes at all downtilt angles. It also features a wide downtilt range with optional remote tilt.



Features/Benefits

- Variable electrical downtilt - provides enhanced precision in controlling intercell interference. The tilt is infield adjustable 0-10 deg.
- High Suppression of all Upper Sidelobes (Typically <-20dB).
- Optional remote tilt - can be retrofitted.
- Two X-Polarised panels in a single radome.
- Dual polarization.
- Low profile for low visual impact.
- Broadband design.

Technical Features

Frequency Band	PCS 1900 (1850-1990 MHz)
Horizontal Pattern	Directional
Antenna Type	Panel Dual Polarized
Electrical Down Tilt Option	Variable
Gain, dBi (dBd)	17.8 (15.8) , 17.8 (15.8)
Frequency Range, MHz	1850-1990 , 1850-1990

RFS The Clear Choice™

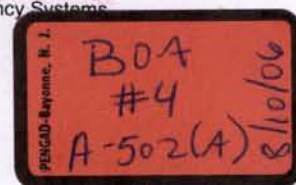
APX16PV-16PVL-A

Print Date: 12.05.2005

Please visit us on the internet at <http://www.rfsworld.com>

Radio Frequency Systems

All information contained in the present datasheet is subject to confirmation at time of ordering



Optimizer® Panel Dual Polarized Antenna



Connector Type	(4) 7-16 DIN Female
Connector Location	Bottom
Mount Type	Fixed
Electrical Downtilt, deg	0-10 , 0-10
Horizontal Beamwidth, deg	66 , 66
Mounting Hardware	APM40-1
Rated Wind Speed, km/h (mph)	160 (100)
VSWR	< 1.5:1
Vertical Beamwidth, deg	6.6
1st Upper Sidelobe Suppression, dB	> 17 (typically > 20)
Upper Sidelobe Suppression, dB	> 18 all (typically > 20)
Polarization	Dual pol +/-45°
Front-To-Back Ratio, dB	> 25
Maximum Power Input, W	300
Isolation between Ports, dB	> 30
Lightning protection	Direct Ground
3rd Order IMP @ 2 x 38 dBm, dBc	> 160
Overall Length, m (ft)	1.35 (4.42)
Dimensions - HxWxD, mm (in)	1349 x 330 x 80 (53 x 12.9 x 3.1)
Weight w/o Mtg. Hardware, kg (lb)	18.0 (39.6)
Radiating Element Material	Brass
Radome Material	Fiberglass
Reflector Material	Aluminum
Max Wind Loading Area, m² (ft²)	0.64 (6.6)
Maximum Thrust @ Rated Wind, N (lbf)	787 (177)
Shipping Weight, kg (lb)	22.8 (49.9)
Packing Dimensions, HxWxD, mm (in)	1550 x 420 x 210 (61 x 16.5 x 8.3)
Survival Wind Speed, km/h (mph)	200 (125)

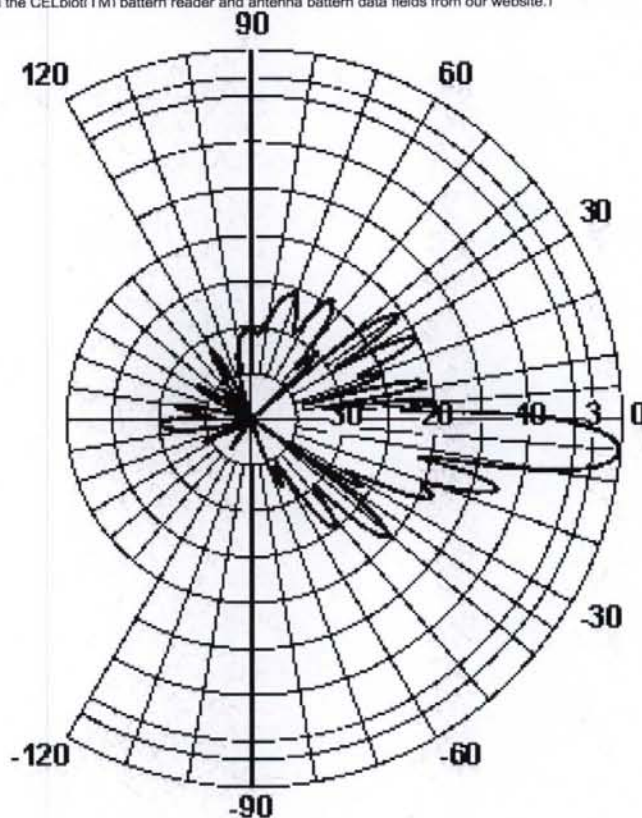
All information contained in the present datasheet is subject to confirmation at time of ordering.



Optimizer® Panel Dual Polarized Antenna

Vertical Pattern

(This is a general representation of the antenna family pattern. For the latest detailed pattern contact Applications Engineering. You may also download the CELplot(TM) pattern reader and antenna pattern data fields from our website.)

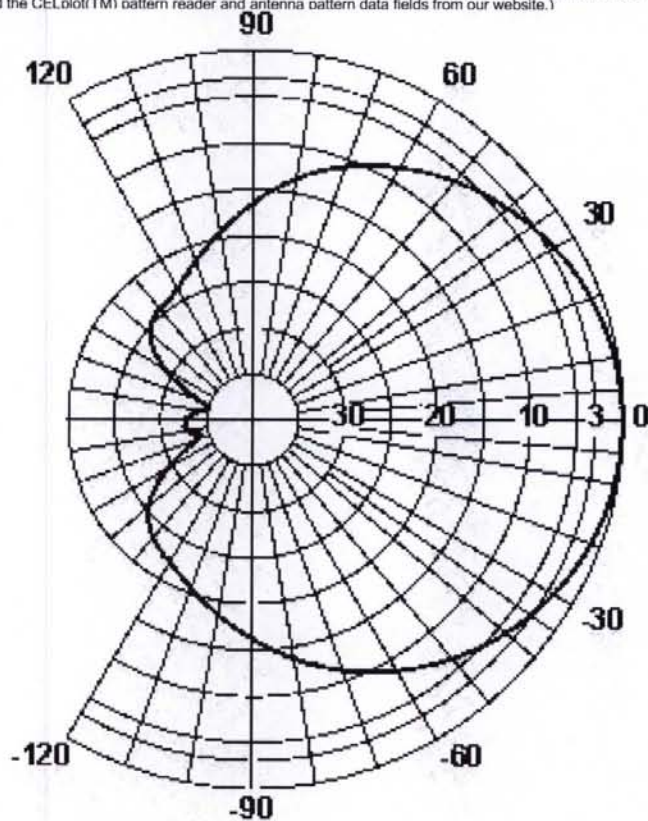




Optimizer® Panel Dual Polarized Antenna

Horizontal Pattern

(This is a general representation of the antenna family pattern. For the latest detailed pattern contact Applications Engineering. You may also download the CELplot(TM) pattern reader and antenna pattern data fields from our website.)



All information contained in the present datasheet is subject to confirmation at time of ordering

PROJECT TYPE

INSTALLATION OF UNMANNED COMMUNICATION EQUIPMENT ON EXISTING BUILDING ROOF. ANTENNAS SHALL BE PLACED WITH A RAD CENTER OF 76'-8" (±) AGL FROM SOUTHEAST ELEVATION. TWO EQUIPMENT CABINETS (ONE NEW & ONE FUTURE) WILL BE PLACED INSIDE THE EXISTING COOLING TOWER ENCLOSURE LOCATED ON THE ROOF.

As-Built
11/5/02

OMNIPPOINT COMMUNICATIONS CAP OPERATIONS LLC INC.

APPROVED FOR CONSTRUCTION

PROPERTY OWNER OR REP. _____ RF _____
ZONING _____ SAC _____
CONSTRUCTION _____

REVISIONS	BY
7-12-02	ABB
FINAL CD	

SITE LOCATION



SITE NAME
ASBURY VILLAGE

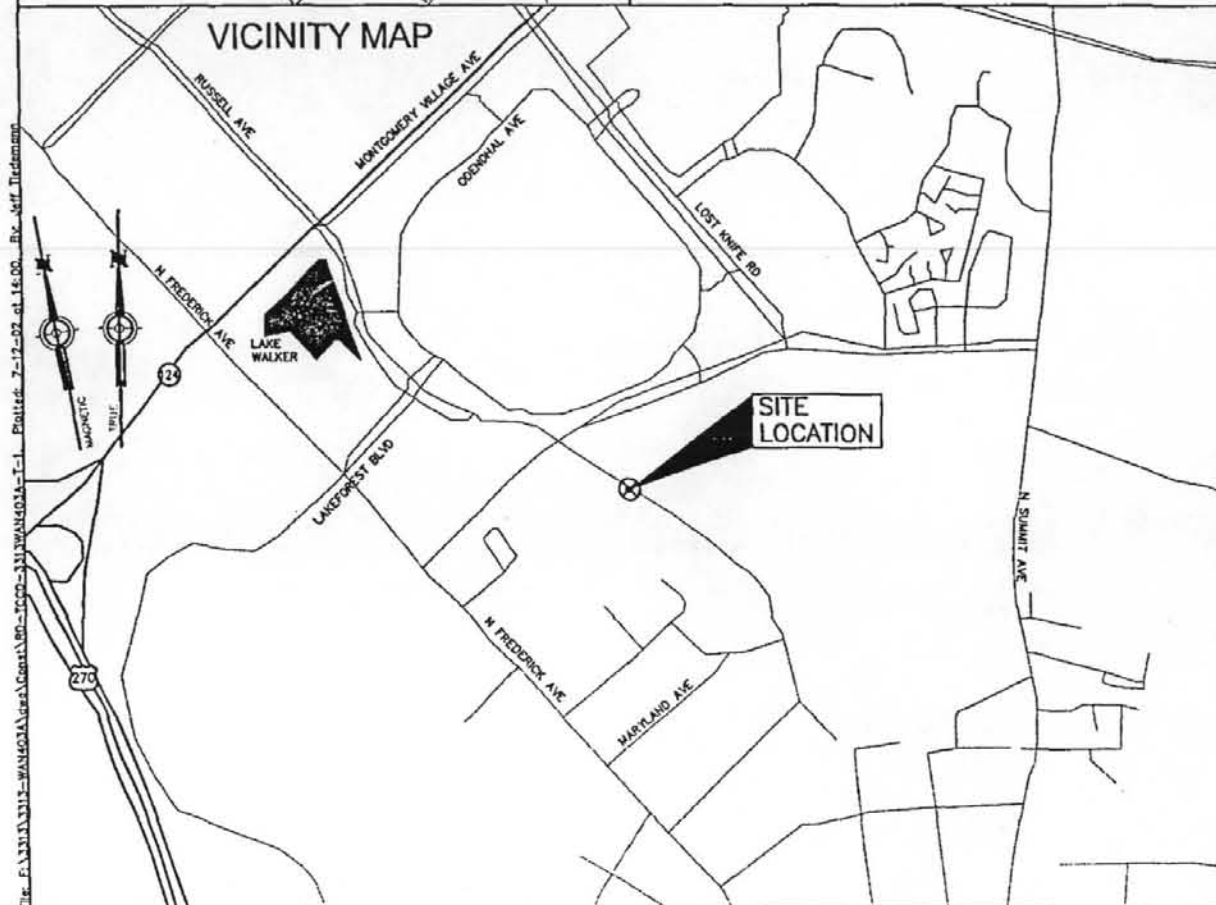
SITE NUMBER
WAN-403A

SITE ADDRESS
333 RUSSELL AVENUE
GAITHERSBURG MD 20877

SHEET INDEX

T-1	TITLE SHEET
SP-1	PARTIAL TOPOGRAPHIC SURVEY
A-1	ROOF TOP PLAN
A-2	SOUTHEAST ELEVATION
A-3	NORTHWEST ELEVATION
A-4	SOUTHWEST ELEVATION
A-5	ANTENNA SCHEDULE & DETAILS
E-1	ELECTRIC/TELCO PLAN
E-2	GROUNDING PLAN
E-3	POWER DIAGRAM/LOAD SUMMARY
E-4	GROUNDING DETAILS
N-1	GENERAL NOTES
N-2	GENERAL NOTES
N-3	GENERAL ELECTRICAL NOTES
N-4	GENERAL GROUNDING NOTES

VICINITY MAP



PROJECT SUMMARY

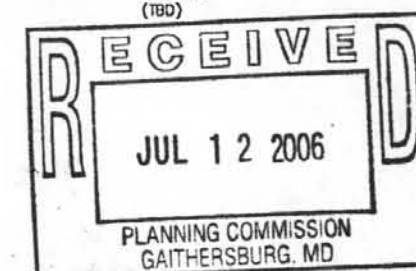
SITE INFORMATION JURISDICTION: CITY OF GAITHERSBURG CODE: IBC 2000, AISC, NEC USE GROUP: 1-2 ZONING: R-90 (MEDIUM DENSITY) CONSTRUCTION TYPE: NON-COMBUSTIBLE "2A" AMSL: 456'-0" (NAVD 29) AGL: 80'-0"± RAD CENTER: 76'-8"± COORDINATES: 39° 08' 55.9" N - 77° 11' 48.8" W (NAD 83) ADDRESS: 333 RUSSELL AVENUE, GAITHERSBURG, MD 20877 TAX PARCEL NO.: 42, PARCEL N238, SUB 201, GROUP 82, PLAT 9891	LANDLORD THE ASBURY METHODIST HOME FOR THE AGED PHONE: (301) 216-4043	APPLICANT VOICESTREAM WIRELESS CORP. 12050 BALTIMORE AVENUE BELTSVILLE, MD 20705 CONTACT: TOM RYALL PHONE: (240)264-8500
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CONSULTANTS

ENGINEER TECTONIC ENGINEERING CONSULTANTS P.C. 804 MOOREFIELD PARK DRIVE, SUITE 100 RICHMOND, VA 23236 CONTACT: PHILIP MELITA PHONE: (804) 330-7203 FAX: (804) 330-7213	SURVEYOR RICE ASSOCIATES 308 TURNER ROAD - SUITE G RICHMOND, VA 23225 CONTACT: LES BYRNSIDE PHONE: (804) 674-9723 FAX: (804) 674-9726	ARCHITECT N/A
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UTILITIES

EXISTING UTILITIES (TBD) ELECTRIC (TBD) TELEPHONE (TBD)



received
7-15-02



TITLE SHEET
ASBURY VILLAGE
WAN-403A
333 RUSSELL AVE
GAITHERSBURG, MD 20877



DATE	7/12/06
APP/TW	ABB/TW
CHECKED BY	PSM
DATE	7/12/06
INITIAL CD	6-13-02
PLAT SCALE	AS NOTED
WORK ORDER NUMBER	3313.WAN403A
SHEET NO.	6-23

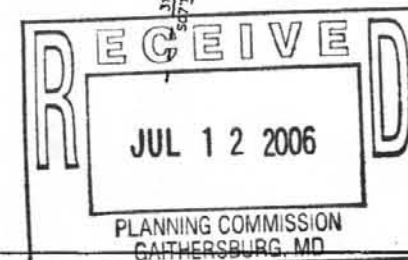
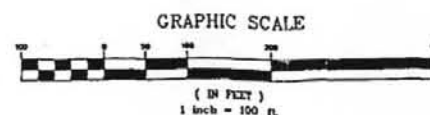
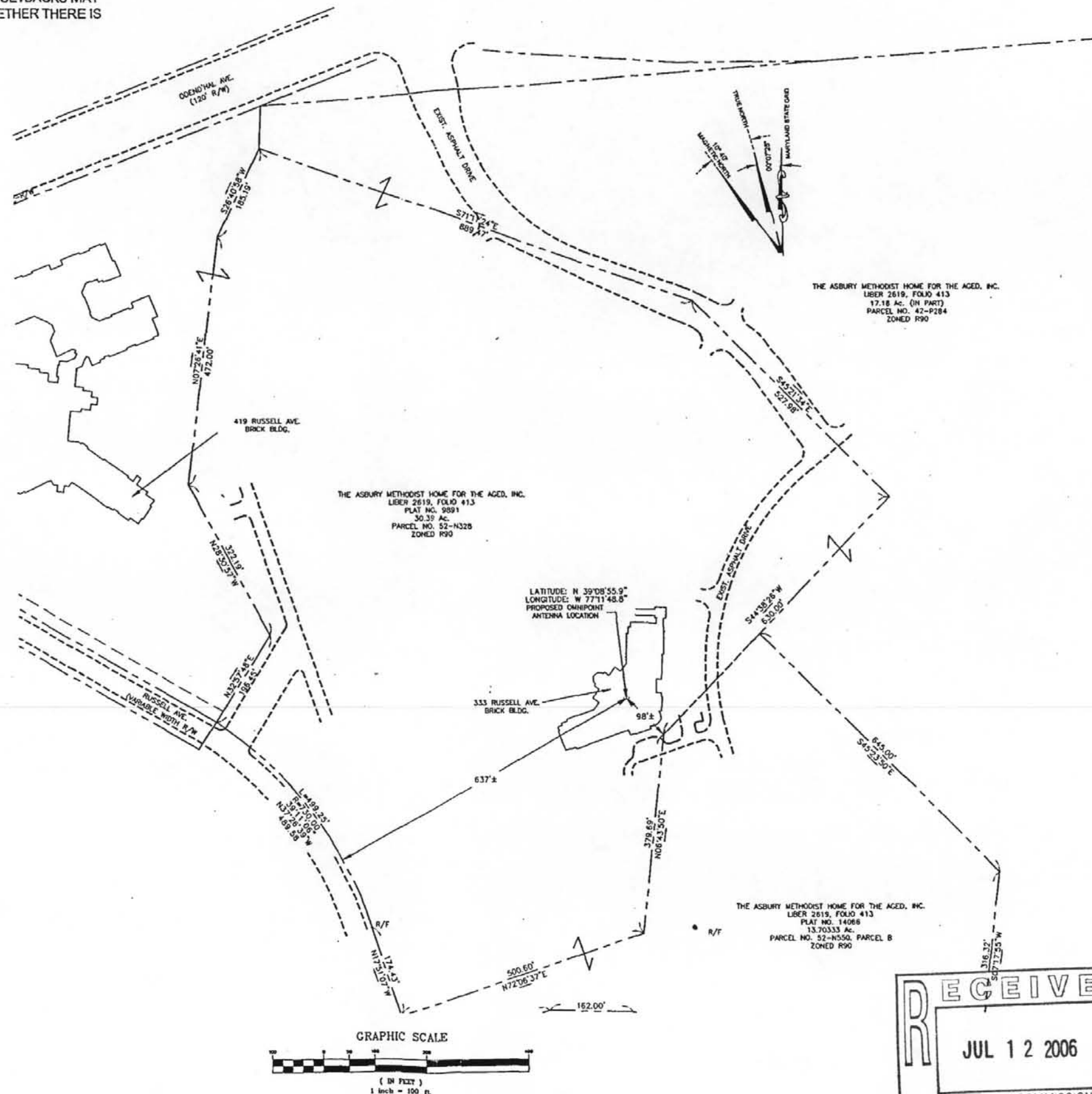
T-1

B04
#5
A-502(4)
11/10/06

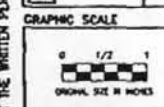
NOTE: AT THE TIME OF THIS SURVEY WE RESEARCHED IN MONTGOMERY COUNTY FOR THE SETBACKS FOR R-90 ZONING. AT THIS TIME WE ARE UNABLE TO SHOW THE PLANNING SETBACKS FOR THIS PARCEL, IN ADDITION THE SETBACKS MAY BE MORE OR LESS INTRUSIVE TO THE SITE DEPENDING ON WHETHER THERE IS A CONDITIONAL USE PERMIT ASSIGNED TO THIS SITE.

- GENERAL NOTES
1. TAX MAP PARCEL # 42, PARCEL N236, SUB 201, GROUP 82, PLAT 9891
 2. PROPERTY OWNER: THE ASBURY METHODIST HOME FOR THE AGED, INC., LIBER 2619, FOLIO 413
 3. BEARINGS SHOWN BASED ON THE MARYLAND STATE PLANE COORDINATE SYSTEM
 4. NO LEASE AREA SHOWN
 5. HORIZONTAL DATUM - NAD 83 (20 ACCURACY)
 6. VERTICAL DATUM - NAVD 29 (20 ACCURACY)
 7. LEASE PROPERTY IS LOCATED IN F.I.R.M. ZONE "C" AS SHOWN ON COMMUNITY PANEL NO. 240049 0125 C DATED JUNE 16, 1992. (FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAPS AND DOES NOT IMPLY THAT THE PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE.)
 8. NO SUBSURFACE INVESTIGATION PERFORMED BY RICE ASSOCIATES
 9. MAGNETIC DECLINATION IS COMPUTED AND NOT OBSERVED
 10. NO WETLANDS AREAS HAVE BEEN DELINEATED
 11. BOUNDARIES AND AREAS OF ADJACENT PARCELS ARE BY COMPILATION
 12. THE BOUNDARIES AND AREAS SHOWN HEREON ARE COMPILED, AND DO NOT REFLECT A COMPLETE SURVEY OF THE PREMISES AND IN NO WAY REPRESENTS AN ACTUAL BOUNDARY SURVEY
 13. THIS SURVEY HAS BEEN DONE WITHOUT THE BENEFIT OF A TITLE REPORT.

I CERTIFY THAT THE LATITUDE OF 39°08'55.9" N AND THE LONGITUDE OF 77°11'48.8" W ARE ACCURATE TO WITHIN ± 7.50 FEET HORIZONTALLY AND THAT THE AVERAGE GROUND ELEVATION AT THE EXISTING BUILDING SITE IS 456' AND IS ACCURATE TO WITHIN ± 7.50 FEET VERTICALLY ON THE SOUTH SIDE OF THE BUILDING WITH AN EXISTING STRUCTURE HEIGHT OF 97' TO THE TOP OF THE BUILDING'S PENTHOUSE. THE HORIZONTAL DATUM (COORDINATES) ARE IN TERMS OF THE NORTH AMERICAN DATUM OF 1983 (NAD83) AND ARE EXPRESSED AS DEGREES, MINUTES AND SECONDS, TO THE NEAREST TENTH OF A SECOND. THE VERTICAL DATUM IS IN TERMS OF THE NORTH AMERICAN VERTICAL DATUM OF 1929 (NAVD 29) AND ARE DETERMINED TO THE NEAREST FOOT.



REVISIONS	BY
1	
2	
3	
4	
5	



RICE ASSOCIATES, P.C.
LAND SURVEYING, MAPPING, CONSULTANTS
305 TUNER ROAD - SUITE B
ROCKVILLE, MARYLAND 20850
(301) 914-1711 (FAX) 914-9778



PARTIAL TOPOGRAPHIC SURVEY
ASBURY VILLAGE
WAN403-A
333 RUSSELL AVENUE
GAITHERSBURG, MD 20877

OMNIPONT
COMMUNICATIONS
CAP OPERATIONS LLC INC.



Drawn by:	OMF
Checked by:	LRB
Date:	03/29/02
Plot Scale:	
Work Order Number:	
Sheet No.:	SP-1

THIS DRAWING IS COPYRIGHTED AND IS THE SOLE PROPERTY OF THE OWNER. IT IS PRODUCED SOLELY FOR USE BY THE OWNER AND ITS AFFILIATES. REPRODUCTION OR USE OF THIS DRAWING AND/OR THE INFORMATION CONTAINED IN IT IS FORBIDDEN WITHOUT THE WRITTEN PERMISSION OF THE OWNER.

SPECIAL PRECAUTION SHALL BE TAKEN BY THE CONTRACTOR SO THAT THE EQUIPMENT ON THIS APPLICATION AND ITS INSTALLATION WILL NOT AFFECT THE FOLLOWING:

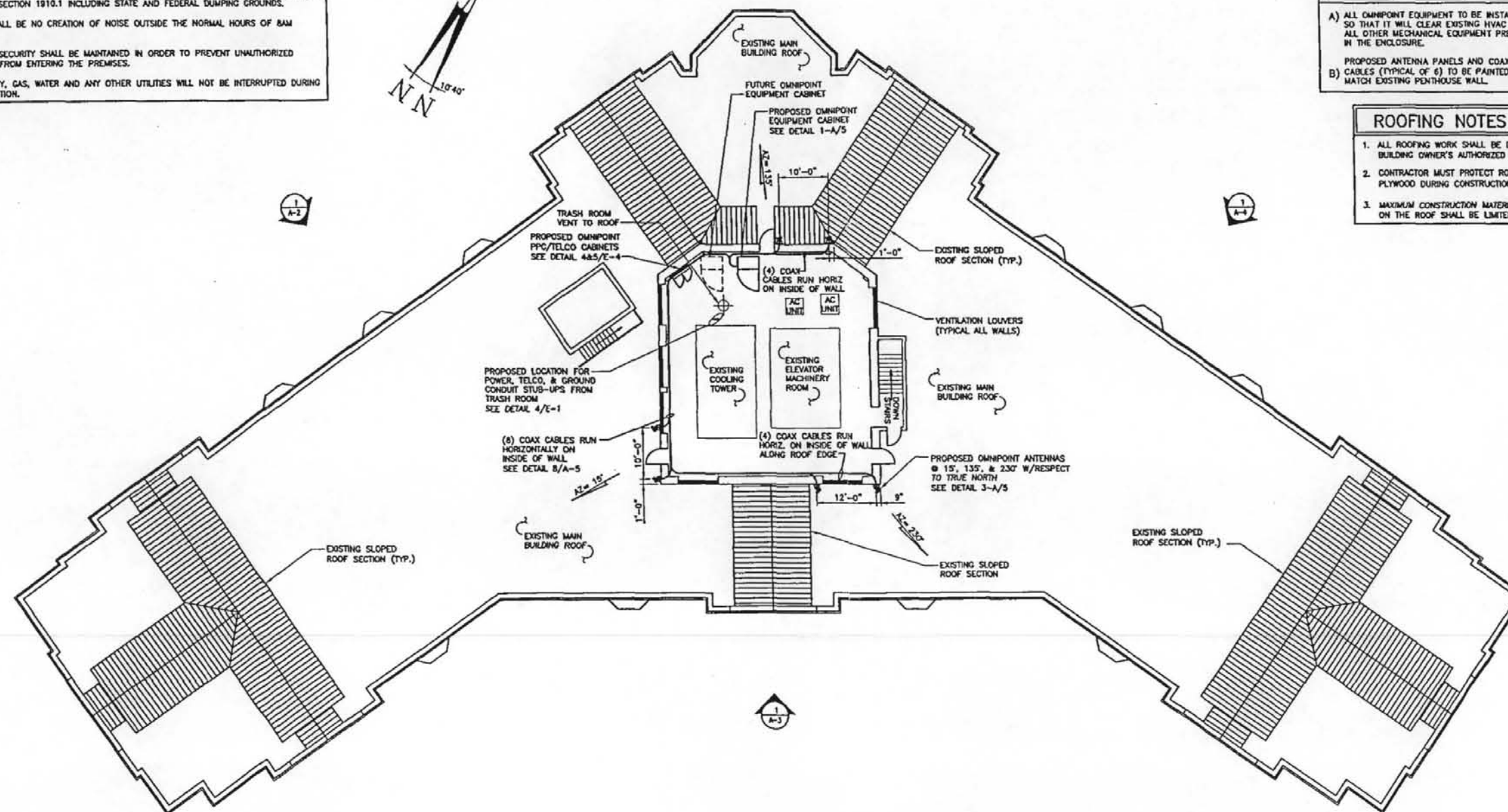
1. TENANT EGRESS TO AND FROM THE BUILDING.
2. FIRE SAFETY OR CREATE A FIRE HAZARD.
3. STRUCTURAL SAFETY OF THE BUILDING.
4. ACCUMULATION OF DUST: THE CONTRACTOR SHALL LEAVE THE WORKSITE BROOM CLEAN EACH DAY. IN THE EVENT THAT ASBESTOS IS FOUND ON THE JOB SITE, ITS REMOVAL SHALL TAKE PLACE IN ACCORDANCE WITH ALL THE APPLICABLE REGULATIONS OF OSHA SECTION 1910.1 INCLUDING STATE AND FEDERAL DUMPING GROUNDS.
5. THERE SHALL BE NO CREATION OF NOISE OUTSIDE THE NORMAL HOURS OF 8AM TO 6PM.
6. BUILDING SECURITY SHALL BE MAINTAINED IN ORDER TO PREVENT UNAUTHORIZED PERSONS FROM ENTERING THE PREMISES.
7. ELECTRICITY, GAS, WATER AND ANY OTHER UTILITIES WILL NOT BE INTERRUPTED DURING CONSTRUCTION.

- THIS SITE IS SUBJECT TO ZONING SECTION 27-445.04.
- THE EQUIPMENT CABINET IS 10.68 S.F. IN AREA AND 69.75" IN HEIGHT.
- THE PANEL ANTENNA IS 72" IN HEIGHT AND 8" WIDE.
- THE EQUIPMENT CABINET WILL BE UNMANNED WITH INFREQUENT VISITS BY MAINTENANCE PERSONNEL.
- ACCESS AND PARKING IS NOT REQUIRED.
- ON PRIVATELY OWNED LAND, IT SHALL NOT SUPPORT LIGHTS OR SIGNS UNLESS REQUIRED FOR AIRCRAFT WARNING OR OTHER SAFETY REASONS.

A) ALL OMNIPONT EQUIPMENT TO BE INSTALLED SO THAT IT WILL CLEAR EXISTING HVAC AND ALL OTHER MECHANICAL EQUIPMENT PRESENT IN THE ENCLOSURE.

B) PROPOSED ANTENNA PANELS AND COAXIAL CABLES (TYPICAL OF 6) TO BE PAINTED TO MATCH EXISTING PENTHOUSE WALL.

1. ALL ROOFING WORK SHALL BE DONE BY THE BUILDING OWNER'S AUTHORIZED ROOFING CONTRACTOR.
2. CONTRACTOR MUST PROTECT ROOF SURFACE WITH PLYWOOD DURING CONSTRUCTION.
3. MAXIMUM CONSTRUCTION MATERIAL DISTRIBUTED LOAD ON THE ROOF SHALL BE LIMITED TO 20 PSF.



1 ROOF TOP PLAN
A-1 SCALE: 3/32" = 1'-0"

RECEIVED
JUL 12 2006
PLANNING COMMISSION
GAITHERSBURG, MD

[illegible]

TECTONIC

Structural Engineering & Surveying
104 Moorlands Park Drive, Suite
100, Mahanwah, N.J. 07430
Telephone (804) 330-7213
Telex (804) 330-7712

PLANNING
ENGINEERING
SURVEYING
FOUNDATION
CONSTRUCTION

Consultants P.C.
100

ROOF TOP PLAN
ASBURY VILLAGE
WAN-403A
333 RUSSELL AVE
GAITHERSBURG, MD 20877

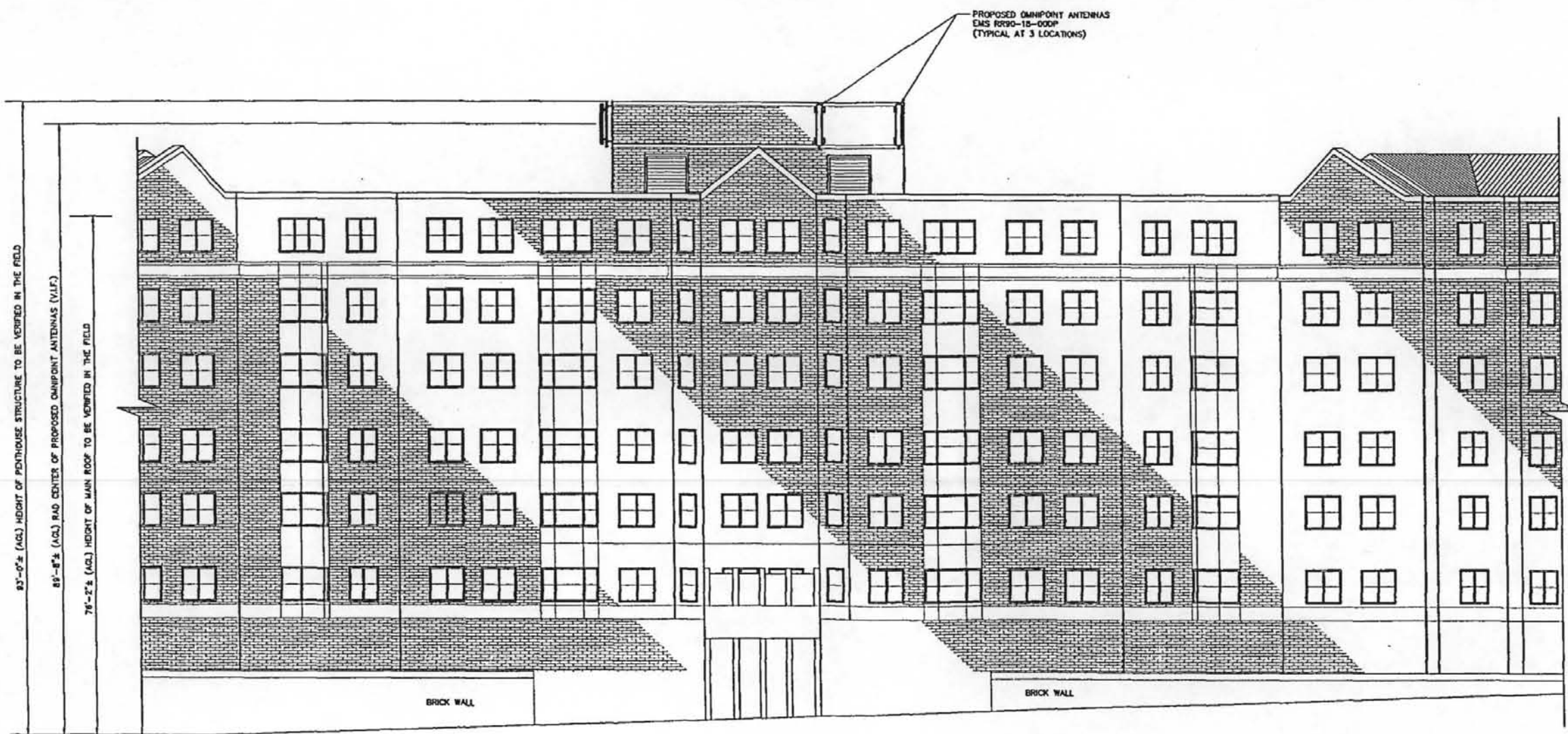
OMNIPONT
COMMUNICATIONS



DRUGS IN
ABB/TW
CHECKED IN
PSM
DATE
INITIAL CD 8-13-02
PLAY SCALE
AS NOTED
WORK ORDER NUMBER
3313.WAH403A
SERV. BY

A-1

File: P:\3333\3333-WAN403A\Drawings\CD\CD-1000-3333\WAN403A-A1.dwg, 7/12/02 at 11:32, Rev. George Gumbert



CONSTRUCTION NOTES:

A) ALL OMNIPONT EQUIPMENT TO BE INSTALLED SO THAT IT WILL CLEAR EXISTING HVAC AND ALL OTHER MECHANICAL EQUIPMENT PRESENT IN THE ENCLOSURE.

B) PROPOSED ANTENNA PANELS AND COAXIAL CABLES (TYPICAL OF 6) TO BE PAINTED TO MATCH EXISTING PENTHOUSE WALL.

1 NORTHWEST ELEVATION
A-3 SCALE: 1/8" = 1'-0"

RECEIVED

JUL 12 2006

PLANNING COMMISSION
GAITHERSBURG, MD

REVISIONS	BY
7-12-02	ABB
FINAL CD	

TECTONIC

Structural Engineering & Construction, Inc.
1000 Westwood Plaza, Suite 100
Baltimore, MD 21206
Tel: (410) 328-7811
Fax: (410) 328-7811
www.TECTONICinc.com

NORTHWEST ELEVATION
ASBURY VILLAGE
WAN-403A
333 RUSSELL AVE
GAITHERSBURG, MD 20877

OMNIPONT
COMMUNICATIONS
CAP OPERATIONS LLC INC.



ABB/TW
CHECKED BY
PSM
DATE
INITIAL CD 6-13-02
AS NOTED
WORK ORDER NUMBER
3313.WAN403A
SHEET NO.
A-3

CONSTRUCTION NOTES:



1 SOUTHWEST ELEVATION
A-4 SCALE: 1/8" = 1'-0"

RECEIVED
JUL 12 2006
PLANNING COMMISSION
GAITHERSBURG, MD

[illegible]

TECTONIC

Technical Engineering & Consulting
3000 Market Street, Suite 1000
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SOUTHWEST ELEVATION
ASBURY VILLAGE
WAN-403A
333 RUSSELL AVE.
GAITHERSBURG, MD 20877

7/14/02

OMNIPPOINT
COMMUNICATIONS
CAP OPERATIONS LLC INC.

STATE OF MARYLAND
EDWARD F. MANNING
PROFESSIONAL ENGINEER
No. 24082

ABB/TW
CHECKED BY:
PSM
DATE
INITIAL CD 6-13-02
PLOT SCALE
AS NOTED
WORK ORDER NUMBER
3313.WAH403A
SHEET No.

A-4

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland
(301) 258-6330

**BOARD OF APPEALS
RESOLUTION APPROVING**

A PETITION BY, OMNIPOINT COMMUNICATIONS CAP OPERATIONS L.L.C., A SUBSIDIARY OF VOICE STREAM WIRELESS, REQUESTING A SPECIAL EXCEPTION TO ERECT A TELECOMMUNICATIONS FACILITY, SIX (6) TELECOMMUNICATIONS ANTENNAE AND RELATED EQUIPMENT CABINETS ON THE ROOFTOP OF 333 RUSSELL AVENUE, KNOWN AS THE KINDLEY BUILDING, AT ASBURY METHODIST VILLAGE, LOCATED IN THE R-90 (MEDIUM DENSITY RESIDENTIAL) ZONE BY §24-29(5) OF THE ZONING ORDINANCE (CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE) ON PARCEL A, ASBURY GAITHERSBURG, MARYLAND.

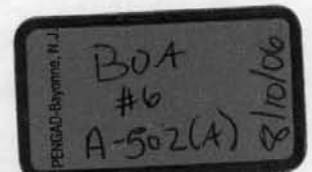
A-502

OPINION

This matter has come before the Board of Appeals as a special exception petition, by Omnipoint Communcations CAP Operations, L.L.C., a subsidiary of Voice Stream Wireless, to erect a telecommunications facility, six (6) telecommunications antennae and related equipment cabinets on the rooftop of 333 Russell Avenue, known as the Kindley Building, behind the Herman Wilson Center, Asbury Methodist Village, located on Parcel A, Asbury, Gaithersburg, Maryland. The property is northeast of Russell Avenue. Access to the site is via an entrance into the Asbury Methodist Village on Russell Avenue. The property is located in the R-90 (Medium Density Residential) Zone. The special exception is allowed by §24-29(5) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) in compliance with §24-167A(D). The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and §24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter.

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-97, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [§24-29(5)] in the R-90 Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.



Steven Weber, Omnipoint Communications CAP Operations L.L.C., a subsidiary of Voice Stream Wireless, originally filed the application and exhibits on April 17, 2002. The petition requested a special exception to erect a telecommunications facility consisting of six (6) telecommunications antennae and related equipment cabinets on the rooftop of 333 Russell Avenue. The property is owned by Asbury Methodist Village, Inc. and is located in the R-90 (Medium Density Residential) Zone, Gaithersburg, Maryland.

In accordance with §24-188(d), the Planning Commission reviewed the special exception request at their May 1, 2002, regularly scheduled meeting. Following introduction and discussion by City of Gaithersburg Staff, and the petitioner and representatives, the Planning Commission analyzed the application and made a recommendation to the Board of Appeals that the special exception be approved with one condition:

1. At such time as Omnipoint CAP Operations L.L.C. / Voice Stream ceases to operate, the antennae, cabinets and associated equipment shall be removed.

The Board of Appeals held a public hearing on Thursday, May 9, 2002, at 7:30 p.m. at City Hall. Notice of the public hearing was published in the April 24, 2002, issue of the *Gaithersburg Gazette*; the property was properly posted, and notices of the public hearing were sent on April 24, 2002 to the petitioner and surrounding property owners.

The Board reviewed 31 exhibits, including the Petitioner's summary of proof, plans and photographs comparing the existing building elevations with photographic simulations of the antennae on the building elevations, a copy of an executed lease, coverage projection maps, antenna and cabinet detail, and amended plans. Senior Planner Schwarz noted that the Planning Commission recommends approval of the petition with one condition as stated above. Steven Weber, Omnipoint Communications CAP Operations L.L.C., a subsidiary of Voice Stream Wireless, presented argument on behalf of the petitioner citing the petitioner's compliance with §24-167A, of the Zoning Ordinance. Testimony was given by Patrick Sasu, Radio Frequency Engineer for Omnipoint Communications, on behalf of the petitioner, concerning the operation of the communications facility and its conformance to the standards for approval of the requested use. There was no testimony, either in favor of or in opposition, to the subject request. Following the testimony and arguments, the Board closed the record except to receive amended drawings and letter of review by Asbury Methodist Village.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

*

*

*

DIVISION 2. R-90 ZONE, MEDIUM DENSITY RESIDENTIAL

* * *

Sec. 24-29 . Uses permitted as special exceptions.

* * *

- (5) Telecommunications facilities, subject to requirements of Section 24-167A(D)(2).

* * *

Section-24-167A. Satellite television antennae and towers, poles, antenna and /or other structures intended for use in connection with transmission or receipt of radio or television signals or telecommunications facilities.

* * *

- (D) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.
- (b) Telecommunications antennae may be attached to a free standing monopole on privately owned land. A free standing monopole including antenna structure for a telecommunications facility is permitted up to 199 feet in height with a set back of one foot for every foot of height from all adjoining

residentially zoned properties, and a set back of one-half foot for every foot of height from adjoining non-residential properties.

- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.
- (d) Public Property.
 - (i) A private telecommunications facility may be located on public property or attached to an existing structure owned or operated by the City of Gaithersburg and shall be a permitted use in all zones. The use of any property owned or operated by the City shall be at the discretion of the City Council and shall not be subject to the same conditions and requirements as are applicable to such facilities on privately owned property. The City Council may but is not required to hold a public hearing prior to its decision to allow the use of property owned or under the control of the City.
 - (ii) A private telecommunications facility may be located on public property or attached to an existing structure owned or operated by a county, state, federal or other non-City governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions and requirements as are applicable to such facilities on privately owned property.
- (e) All such antennae shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three telecommunications carriers may be permitted by special exception when approved by the Board of Appeals.
- (i) No more than one monopole is permitted on a lot or parcel of land and, no two monopoles may be located within 1000 feet of each other in any zone in

which such facilities are permitted uses. In any such zones more than one monopole may be permitted on a lot or parcel and two or more monopoles may be located within 1,000 feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two or more monopoles within 1,000 feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.

- (j) Every free standing monopole or support structure and any unmanned equipment or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:
 - (1) Complies with all of the standards contained in Section 167A(D)1.
 - (2) The location selected is necessary for the public convenience and service.
 - (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
 - (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
 - (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennae and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennae. The holder of a special exception may not refuse to permit the co-location of two additional antennae and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special

exception.

- (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least 30 feet in height in any multi-family residential zone or non-residential zone; and 50 feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.
- (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least 30 feet on a building located in a multi-family residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.
- (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed 560 square feet and 12 feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.
- (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
- (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10 percent. The board must also find that the structure is not visually intrusive.
- (11) The board must also find that a free standing monopole or other support structure is proposed to hold no less than three telecommunications carriers. The board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or (b) the applicant establishes that co-location on an existing monopole is

technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

(b) Area requirements.

- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (C).
- (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
- (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.
- (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

(c) Location Requirements for structure. A monopole or other support structure must be located as follows:

- (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
- (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.

(d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.

(e) Lights. No lights or other illumination devices are permitted on a monopole or

other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.

- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

* * *

ARTICLE VII. Board of Appeals.

* * *

Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

* * *

- (b) Special Exception. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of the petitioner's testimony and exhibits of record, the testimony of the petitioner's witnesses and representations of the petitioner's attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

* * *

Sec. 24-189. Findings required.

* * *

- (b) Special exceptions. A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

(1) Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in this article

chapter and the development standards for the zone within which the intended use will be located;

(2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter;

(3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;

(5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;

(6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and

(8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

Findings and Conclusions

Based on the petitioner's arguments, binding testimony and evidence of record, the Board finds that the application proposes to construct, operate and maintain six (6) 72-inch high antennae on the face of the rooftop penthouse screen of the subject building. The petition also includes equipment cabinets at a height of five-(5) feet-three-(3) inches by four-(4) feet-three-(3) inches by two-(2) feet-six-(6) inches, each located within the rooftop penthouse screen. The location of the telecommunications facility is within the R-90 (Medium Density Residential) Zone and is allowed by special exception as stated in §24-29(5) of the Zoning Ordinance (Chapter 24 of the City Code).

The petitioner has shown that the height of the top of the antennae attached to the building is the same height of the top of the penthouse screen wall and will not protrude above the screen wall. The proposed panel-type antennae, which are six-(6) feet in height and eight-(8) inches wide, will be attached to the penthouse screen. The petitioner has shown that the average height of the roof of the building is approximately 69.5 feet, not

including the penthouse screen. The antennae will be mounted and painted with two tones of paint in order to blend into the existing color scheme of the architecture of the building and to ensure compatibility with the exterior design and character of the building in order to incorporate the antennae into the building facade. The propagation maps have shown that the location selected will enhance both the capacity and the coverage of Voice Stream telecommunication service for public convenience and service and fill a void within the system of the provider.

The Board finds that the petitioner has proved that the petition is permissible by §24-29(5), of the Zoning Ordinance and that it also complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the master plan of Neighborhood One in which this property is located. The petitioner has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in §24-167A(D)(1) and (2) as discussed above.

The testimony of the petitioner's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, and will cause no objectionable vibrations, fumes, odors, dust, toxicity, glare or physical activity. The Voice Stream Wireless Corporation system has received approval from the Federal Communication Commission. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

Because the proposed telecommunication facilities are to be blended into the materials and colors of the building, which is approximately 84 feet in height at the top of the penthouse screen wall, the petitioner has shown that this petition is in harmony with the general character of the neighborhood of Asbury Methodist Village in relation to the design, color and scale of the antennae. This proposal will also maintain the residential appearance of the building and not require additional landscaping, screening or fencing. Because the use will only require monthly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The existing assisted living, multi-family building is already served by adequate public facilities and the proposed use will not increase the need for more services.

In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of a telecommunications facility consisting of six-(6) antennae and supporting equipment cabinets at 333 Russell Avenue, Asbury Methodist Village, Gaithersburg, Maryland. The petitioner has shown compliance with §24-167A(D)(1) and (2) and §24-189(b) subject to the following conditions:

1. At such time as Omnipoint CAP Operations L.L.C. / Voice Stream ceases to operate, the antennae, cabinets and associated equipment shall be removed by

the petitioner.

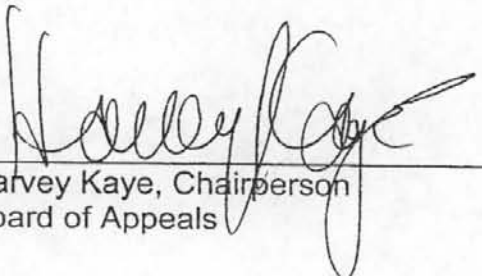
2. Prior to issuance of any permits, the petitioner shall submit revised drawings of Board of Appeals Exhibit #11 for staff review and approval.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the Board of Appeals of the City of Gaithersburg on the 9th day of May, 2002, that Case A-502, the petition of Steven Weber, Omnipoint Communications CAP Operations L.L.C., a subsidiary of Voice Stream Wireless, requesting a special exception for a telecommunications facility in the R-90 (Medium Density Residential) Zone on Parcel A, Asbury, Gaithersburg, Maryland, be APPROVED with the following conditions:

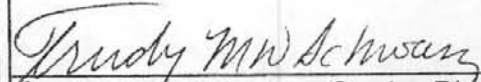
1. At such time as Omnipoint CAP Operations L.L.C. / Voice Stream ceases to operate, the antennae, cabinets and associated equipment shall be removed by the petitioner.
2. Prior to application for any building permits, the petitioner is to submit to staff revised drawings of Board of Appeals Exhibit #11 for staff review and approval.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 9th day of May, 2002. Board Members Kaye, Knoebel, Harris, Trojak and Macdonald, being present and voting in favor of the action.


Harvey Kaye, Chairperson
Board of Appeals

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the City of

Gaithersburg Board of Appeals, in a public meeting assembled, on the 9th day of May, 2002



Trudy M.W. Schwarz, Senior Planner
Chief Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland
(301) 258-6330

**BOARD OF APPEALS
RESOLUTION APPROVING**

A PETITION BY T-MOBILE, REQUESTING AN AMENDMENT TO SPECIAL EXCEPTION A-502 TO REPLACE SIX (6) TELECOMMUNICATIONS ANTENNAS ON AN EXISTING TELECOMMUNICATIONS FACILITY ON THE ROOFTOP OF 333 RUSSELL AVENUE, KNOWN AS THE KINDLEY BUILDING, AT ASBURY METHODIST VILLAGE, LOCATED IN THE R-90 (MEDIUM DENSITY RESIDENTIAL) ZONE BY §24-29(5) OF THE ZONING ORDINANCE (CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE) ON PARCEL A, ASBURY GAITHERSBURG, MARYLAND.

A-502 (A)

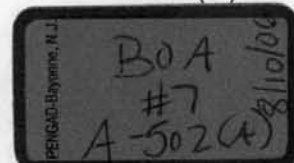
OPINION

This matter has come before the Board of Appeals as an amendment to special exception A-502 petition, by T-Mobile to replace six (6) telecommunications antennas on the rooftop of 333 Russell Avenue, known as the Kindley Building, behind the Herman Wilson Center, Asbury Methodist Village, located on Parcel A, Asbury, Gaithersburg, Maryland. The property is northeast of Russell Avenue. Access to the site is via an entrance into the Asbury Methodist Village on Russell Avenue. The property is located in the R-90 (Medium Density Residential) Zone. The special exception is allowed by §24-29(5) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) in compliance with §24-167A(D). The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and §24-191(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to amend or modify the terms or conditions of a special exception upon the request of a special exception holder.

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-97, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [§24-29(5)] in the R-90 Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

On May 9, 2002 the Board of Appeals granted a special exception for a telecommunications facility with six (6) panel antennas and an equipment cabinet on the roof of 333 Russell Avenue to Steven Weber, Omnipoint Communications CAP Operations



L.L.C., a subsidiary of Voice Stream Wireless, with the following two conditions:

1. At such time as Omnipoint CAP Operations L.L.C. / Voice Stream ceases to operate, the antennae, cabinets and associated equipment shall be removed by the petitioner.
2. Prior to application for any building permits, the petitioner is to submit to staff revised drawings of Board of Appeals Exhibit #11 for staff review and approval.

On July 12, 2006 Jack Andrews, on behalf of T-Mobile (formerly Omnipoint CAP Operations LLC), filed a petition and exhibits requesting an amendment to special exception A-502. The petition requested an amendment to permit the replacement of six (6) panel antennas with six (6) panel antennas of a different dimension. No additional changes to the facility were proposed.

The Board of Appeals reviewed the amendment request at its regular meeting on Thursday, August 10, 2006, at 7:30 p.m. at City Hall. Planner Seiden noted that a public hearing is not required for an amendment to an existing special exception. She also noted that an amendment was necessary because the dimensions of the proposed antennas differ from those of the existing antennas.

The Board reviewed seven exhibits, including a letter from the applicant, building elevations and specification sheets for the proposed antennas. Mr. Jack Andrews presented argument regarding the replacement of the antennas. There was no additional testimony either for or against the application.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

* * *

DIVISION 2. R-90 ZONE, MEDIUM DENSITY RESIDENTIAL

* * *

Sec. 24-29 . Uses permitted as special exceptions.

* * *

- (5) Telecommunications facilities, subject to requirements of Section 24-167A(D)(2).

* * *

Section-24-167A. Satellite television antennae and towers, poles, antenna and /or other structures intended for use in connection with transmission or receipt of radio or television signals or telecommunications facilities.

*

*

*

(D) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.
- (b) Telecommunications antennae may be attached to a free standing monopole on privately owned land. A free standing monopole including antenna structure for a telecommunications facility is permitted up to 199 feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half foot for every foot of height from adjoining non-residential properties.
- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.
- (d) Public Property.
 - (i) A private telecommunications facility may be located on public property or attached to an existing structure owned or operated by the City of Gaithersburg and shall be a permitted use in all zones. The

use of any property owned or operated by the City shall be at the discretion of the City Council and shall not be subject to the same conditions and requirements as are applicable to such facilities on privately owned property. The City Council may but is not required to hold a public hearing prior to its decision to allow the use of property owned or under the control of the City.

- (ii) A private telecommunications facility may be located on public property of or attached to an existing structure owned or operated by a county, state, federal or other non-City governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions and requirements as are applicable to such facilities on privately owned property.
- (e) All such antennae shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three telecommunications carriers may be permitted by special exception when approved by the Board of Appeals.
- (i) No more than one monopole is permitted on a lot or parcel of land and, no two monopoles may be located within 1000 feet of each other in any zone in which such facilities are permitted uses. In any such zones more than one monopole may be permitted on a lot or parcel and two or more monopoles may be located within 1,000 feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two or more monopoles within 1,000 feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.
- (j) Every free standing monopole or support structure and any unmanned

equipment or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

(a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:

- (1) Complies with all of the standards contained in Section 167A(D)1.
- (2) The location selected is necessary for the public convenience and service.
- (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
- (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
- (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennae and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennae. The holder of a special exception may not refuse to permit the co-location of two additional antennae and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.
- (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least 30 feet in height in any multi-family residential zone or non-residential zone; and 50 feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.
- (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least 30 feet on a building located in a multi-family residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.

- (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed 560 square feet and 12 feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.
- (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
- (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10 percent. The board must also find that the structure is not visually intrusive.
- (11) The board must also find that a free standing monopole or other support structure is proposed to hold no less than three telecommunications carriers. The board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

(b) Area requirements.

- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (C).
- (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
- (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the

perimeter property line.

- (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.
- (c) Location Requirements for structure. A monopole or other support structure must be located as follows:
 - (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
 - (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.
- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.
- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.
- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

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ARTICLE VII. Board of Appeals.

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Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

* * *

(b) Special Exception. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of the petitioner's testimony and exhibits of record, the testimony of the petitioner's witnesses and representations of the petitioner's attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

* * *

Sec. 24-189. Findings required.

* * *

(b) Special exceptions. A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

(1) Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in this article chapter and the development standards for the zone within which the intended use will be located;

(2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter;

(3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;

(5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;

(6) Will not adversely affect the health, safety, security, morals or general

welfare of residents, visitors or workers in the area;

(7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and

(8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

Sec. 24-191. Special exception implementation, modification and abandonment.

* * *

(b) The board of appeals is authorized to amend or modify the terms or conditions of a special exception upon the request of the special exception holder or upon recommendation of any city department or the planning commission, or pursuant to a show cause hearing provided in section 24-192 of this Code. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which such use is located. If the board determines that a hearing is required, the notice and hearing provisions contained in section 24-188 of this Code shall apply.

Findings and Conclusions

The Board finds that the request of the special exception holder does not require a public hearing and that the current application does not alter any previous findings regarding compliance with all the requirements for the development of a telecommunications facility.

Based on the petitioner's arguments, binding testimony and evidence of record, the Board finds that the application proposes to replace six (6) 72-inch high antennas on the face of the rooftop penthouse screen of the subject building with six (6) 54-inch high antennas. The location of the telecommunications facility is within the R-90 (Medium Density Residential) Zone and is allowed by special exception as stated in §24-29(5) of the Zoning Ordinance (Chapter 24 of the City Code).

In its previous application, the petitioner has shown that the height of the top of the antennas attached to the building is the same height of the top of the penthouse screen wall and will not protrude above the screen wall. The proposed panel-type antennas, which are 54 inches in height and 12.9 inches wide, will be attached to the penthouse screen. The petitioner has shown that the average height of the roof of the building is approximately 69.5 feet, not including the penthouse screen. The antennas will be mounted and painted with two tones of paint in order to blend into the existing color

scheme of the architecture of the building and to ensure compatibility with the exterior design and character of the building in order to incorporate the antennas into the building facade.

The Board finds that the petitioner has proved that the petition is permissible by §24-29(5), of the Zoning Ordinance and that it also complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the 2003 Master Plan Land Use Plan in which this property is located. The petitioner has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in §24-167A(D)(1) and (2) as discussed above.

The testimony of the petitioner's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, and will cause no objectionable vibrations, fumes, odors, dust, toxicity, glare or physical activity. The Voice Stream Wireless Corporation system has received approval from the Federal Communication Commission. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

Because the proposed telecommunication facilities are to be blended into the materials and colors of the building, which is approximately 84 feet in height at the top of the penthouse screen wall, the petitioner has shown that this petition is in harmony with the general character of the neighborhood of Asbury Methodist Village in relation to the design, color and scale of the antennae. This proposal will also maintain the residential appearance of the building and not require additional landscaping, screening or fencing. Because the use will only require monthly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The existing assisted living, multi-family building is already served by adequate public facilities and the proposed use will not increase the need for more services.

In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of the replacement of six (6) panel antennas on the rooftop at 333 Russell Avenue, Asbury Methodist Village, Gaithersburg, Maryland. The petitioner has shown compliance with §24-167A(D)(1) and (2) and §24-189(b) subject to the following conditions:

1. At such time as T-Mobile ceases to operate, the antennas, cabinets and associated equipment shall be removed by the petitioner.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the Board of Appeals of the City of Gaithersburg on the 10th day of August, 2006, that Case A-502 (A), the petition of Jack Andrews, T-Mobile, requesting an amendment to special exception A-502 for the

replacement of six (6) panel antennas in the R-90 (Medium Density Residential) Zone on Parcel A, Asbury, Gaithersburg, Maryland, be APPROVED with the following condition:

1. At such time as T-Mobile ceases to operate, the antennas, cabinets and associated equipment shall be removed by the petitioner.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 10th day of August 2006. Board Members Kaye, Knoebel, Macdonald, Trojak and Rieg being present and voting in favor of the action.

Harvey Kaye, Chairperson
Board of Appeals

DATE

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 10th day of August, 2006.

Caroline H. Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.